IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 25923 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE H.K.RATHOD

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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DIST. DEVE. OFFICER & 1 - Petitioner(s)
Versus
RAJENDRASINH JASVANTSINH CHUDASAMA - Respondent(s)

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Appearance :
MS RV ACHARYA for Petitioner(s) : 1 - 2.
MR DG SHUKLA for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE H.K.RATHOD

Date : 27/07/2007

ORAL JUDGMENT

Heard learned advocate Ms. RV Acharya on behalf of the petitioner, learned advocate Mr. DG Shukla

appearing for the respondent.

In the present petition, petitioner has challenged the award passed by Labour Court, Bhavnagar in reference no. 429/1994 dated 27/2/2006. The Labour Court has allowed the reference, set aside the termination order and granted the reinstatement with continuity of service with full back wages of interim period.

Learned advocate Ms. Acharya submitted that periodical appointment in the post of Driver was given to the respondent and each month there was a break in service and separate order of appointment is to be considered afresh appointment on each month. It is not covered by definition of Retrenchment under section 2(oo) of I. D. Act 1947 and because of such kind of appointment covered by the definition of Section 2(oo)(bb) of I.D. Act 1947.

She submitted that the respondent was attached with the Chairman of the Education Committee Car and a moment the Committee is dissolved, the requirement of Driver is not necessary. Therefore, the period of appointment is come to end by efluxation of time. Therefore, now there is no need to have service of Driver because Education Committee is dissolved. She submitted that Labour Court has wrongly granted full back wages of interim period.

Learned advocate Mr. DG Shukla appearing for the

respondent submitted that Labour Court has rightly appreciated the oral and documentary evidence and come to the conclusion that it amounts to retrenchment and Section 25(F) is not followed by the petitioner. Therefore, reinstatement is rightly granted by the Labour Court that in appointment order the break was given, but in fact respondent was remained continue in service and also worked on breaks days. Even on break period, it was established by the respondent while producing the log book of the Ambassador Car before the Labour Court that on break period Respondent had worked with the petitioner.

Learned advocate Mr. Shukla submitted that respondent was appointed on regular scale from 1/9/1989 to 31/3/1993. Therefore, there was no break between the period. Therefore, the Labour Court has rightly granted the benefit, for which respondent was entitled as gainful employment is not proved by the petitioner before the Labour Court and respondent was remained without employment being not in gainful employment.

Learned advocate Mr. Shukla submitted that respondent had given oral evidence before the Labour Court, where he remained unemployed and not gainfully employed, which is specifically proved. Thereafter, the burden is sifted upon the petitioner to disprove the aforesaid evidence, but no oral or documentary evidence produced by petitioner before the Labour

Court. Therefore, he submitted that Labour Court has rightly appreciated the facts and no error is committed by the Labour Court, which require any interference by this Court.

I have considered the submissions made by both the learned advocates, certain facts are not disputed between the parties. The respondent was appointed by periodically order w.e.f. 1/9/1989 to 31/3/1993. The appointment order issued on regular scale vide exh. 16 to 46 produced by the petitioner before the Labour Court. The period of break, during which, respondent was remained in service, that fact was proved by producing log book of the concerned Car before the Labour Court. The Labour Court has also appreciated the evidence vide exh. 48 and 49, where log book was appreciated that though order of appointment was issued periodically, but the nature of work is to be performed by the respondent permanently. Even though, the periodically order have been issued without any justification and for to deny legal protection to the respondent.

Therefore, the Labour Court has come to the conclusion that such kind of practice adopted by the employer, who is state authority issued periodically order knowing fully well that work in a next month must have to be taken from the present respondent only, even though each month periodically order was suggested ulterior motive and malafide intention of petitioner to deny the legitimate right of the

respondent to claim the benefit under the provisions of I. D. Act 1947.

Therefore, though periodically order were there, but such tendency without any justification and requirement, because so long the Chairman of Education Committee is dissolved the respondent must remained in service. Then question of termination or discontinued in between does not arise. Even though each month specific periodically order issued, which considered by the Labour Court as unfair labour practice as per the Schedule 5 Clause 10 of I.D. Act 1947. Therefore, the Labour Court has come to conclusion that it was not the case fall under exception section 2(oo)(bb), but it is clear case of termination with continuity of service, which amounts to retrenchment and retrenchment covered by Section 2(oo) of I.D. Act 1947 under section 25 B(2), where workman has completed continue service for 240 days in a year then entitled for protection of Section 25(F) of I.D. Act 1947. Even though section 25 (F) is undisputedly not complied by the petitioner at the time of terminating the service of respondent. The periodical order was issued after completion specified period and started new period meaning thereby in between period order issued by petitioner.

The Labour Court has considered that within twelve months period, whether workman has completed 240 days service or not from 1/4/1992 to 31/3/1993. The Labour Court has considered exh. 51, the salary

which was paid to the respondent by the petitioner from 1/4/1992 to 31/3/1993 as per pay slip, workman has completed continue service of 240 days in twelve months period and vide exh 52, no notice or notice pay and retrenchment compensation paid to the respondent as not disputed by petitioner. At the time of termination, Section 25(F) has not complied, this evidence not disputed by the petitioner, therefore, the Labour Court has come to the conclusion that termination is contrary to the section 25(F) of the I. D. Act 1947 and therefore, the question of back wages examined by the Labour Court and in absence of gainful employment of the workman, the Labour Court has granted full back wages of interim period for that no evidence was produced by the petitioner about gainful employment of the respondent workman.

The respondent was appointed as driver while issuing 29 days appointment order on daily wage basis. It was not contractual appointment for specific work for specific purpose, and for specific duration. The object of 2(oo)(bb) is not satisfied in such type of periodical appointment order. The petitioner has to justify before the Labour Court that test laid down in 2(oo)(bb) is satisfied. But same is not proved by petitioner before the Labour Court. There is no need to issue such kind of order when there is no requirement. Actually respondent was appointed on daily wages basis. The next month to each month, the work is available even though why

such type of periodical order issued by petitioner, not explained by petitioner. But Labour Court has rightly come to conclusion that it amounts to unfair labour practice adopted by petitioner. The Respondent had given one application for job, but thereafter on each month no separate application for job given by Respondent. The periodical order issued after period was started means that service of respondent remained continued, but on record and paper must shown artificial break. So, legitimate right of respondent can be denied, protection of 25 (F) can be denied. The respondent had actually worked 347 days continuous service within twelve months period preceding date of termination. The respondent satisfied 25 B(2) and (1) also where continuous service defined. The Section 25(F) not followed. Then termination amounts Retrenchment within the meaning of 2(oo) with result termination ab intio void. The respondent is deemed to be in service for all the purposes as per decision of Apex Court in case **Mohan Lal Vs. The management of M/s. Bharat Electronics, Ltd., reported in AIR 1981 SC 1253.** The gainful employment not proved by petitioner then respondent entitled for normal relief of reinstatement with full back wages as per decision of Apex Court **in case of M/s. Hindustan Tin Works Pvt. Ltd., Vs. The Employees of M/s. Hindustan Tin Works Pvt Ltd and others reported in AIR 1979 SC page 75.** Therefore, Labour Court has not committed any error. The finding is based on legal evidence. It is not perverse. Therefore, there is no

jurisdictional erro committed by Labour Court.

The object of Section 2(oo)(bb) of I.D.Act 1947 in such factual matrix which are involved in present case. In case of Executive Engineer District Panchayat Vs. Shankarbhai Jivabhai Patel reported in 2006 Lab IC 2180. The relevant para 6, 7, 8, 9, 10 and 11 are quoted as under:

> **6. The petitioner-employer is the Executive Engineer, District Panchayat, Bharuch. The petitioner-Panchayat has not established few facts before the Labour Court, one that why service condition has been changed from daily wager to periodical appointment. For that, no requirement or justification has been pointed out and justified by the petitioner-Panchayat. Second thing is that what was the requirement or necessity to issue such type of periodical appointment orders in favour of workman for the period from 10.9.1984 to 31.1.1987. The third thing is why the contract is not renewed after period 31.1.1987, whether work was available or not or particular work is over or project is over, no justification from the petitioner-Panchayat for not to extend the service of workman beyond 31.1.1987 is forthcoming. So the Labour Court, in such circumstances, rightly considered the object of incorporation of Section 2(oo)(bb) in the Act and word `contract' has been interpreted in a proper manner. So the employer may not misuse such provision in a normal case by giving periodical appointment. The object behind amendment of Section 2(oo)(bb) is that in some cases, due to workload, some project or some particular target in factory or establishment is required to be completed within some specific time,**

therefore in such circumstances, it can be justified for periodical appointment because of such kind of work available with the employer, but in normal case like present one, the petitioner, who is a Panchayat, appointed the workman in a periodical manner from daily wager to periodical appointment, and this has not been justified by proper evidence before the Labour Court that there was really need of a person for a particular period and not for ever and therefore, his services were not continued. One witness was examined on behalf of the petitioner-Panchayat. There was no evidence produced before the Labour court by the petitioner-Panchayat to satisfy the requirement of Section 2(oo)(bb) of the Act. Suppose in case if really the petitioner-Panchayat was having necessity to employee the workman for one month and in case his services were required in second month, appointment order can be given for second month, but it is not understandable the practice or tactics which has been adopted by the petitioner-Panchayat that for entire period from 10.9.1984 to 31.1.1987, about more than three years, a workman remains in service by periodical appointment orders with breaks of one or two days. So ultimately the idea of a public body is to exploit the workman by taking work from him in such a manner because the workman has no source to have bargaining with the Panchayat because he is unemployed. Therefore, he is compelled to accept such type of orders but it is not a bonafide order issued by the Panchayat and therefore the Labour Court has rightly appreciated the evidence on record and came to the conclusion that it is not a bonafide order and it amounts to exploitation of a workman by a public body by issuing an order of appointment in arbitrary manner and ultimately just to exclude termination from the scope of

Section 2(oo) of the Act. In the light of this, the Labour Court has set aside the termination order considering his continuous service with effect from 11.8.1983 to 31.1.1987, and holding that Section 25F of the Act has not been complied with by the petitioner-Panchayat and it is not a case of Panchayat that they have complied with the provision of Section 25F of the Act. Therefore, according to my opinion, the Labour Court has rightly set aside the termination order.

7. Following decisions have been relied upon by learned advocate Shri Sudhanshu Patel for the Petitioner-Panchayat:

(1) Kishore Chandra Samal v. The Divisional Manager, Orissa State Cashew Development Corporation Ltd., Dhenkanal – 2005(9) SCALE 379

(2) Punjab State Electricity Board v. Darbara Singh - 2005(9) SCALE 385

(3) General Manager, Haryana Roadways v. Rudhan Singh – (2005)5 SCC 591

(4) Navodaya Vidyalaya Samiti v. T.C.S. Naidu – (2001)9 SCC 403

(5) Balubhai G.Makwana v. State of Gujarat & Ors. - 2002(4) GLR 2940.

8. Relying upon the decision of Apex Court in General Manager, Haryana Roadways (supra) it is submitted that in case termination is found to be bad or illegal, workman is not entitled automatically for full backwages or any wages, but before granting wages, certain relevant factors are to be taken into account by the Labour Court about the length of service, age, family circumstances and condition of establishment. He submitted that as per the decisions of Apex Court, periodical appointments are outside the scope of

Section 2(oo) of the Act, means, it is not retrenchment. However, the facts in each case are different in comparison to the facts of the present case. Recently, the Division Bench of Madras High Court in *The Manager (P&A), Oil and Natural Gas Corporation Ltd., Chennai v. G.Radhakrishnan* (2005 Lab.I.C. 2570) has considered the scope of Section 2(oo)(bb) and also considered that how unscrupulous employer abuse such provision while employing the workmen, and that in such circumstances, the court should see the real position so as to rule out injustice to the workmen. The Division Bench of Madras High Court in above decision considered certain decisions of Apex Court and various High Courts and thereafter held in paragraph-22 that:

"22. The above referred to decisions on interpretation of Section 2(oo)(bb) explain the legal position to the effect that a claim of an employer on a term based employee providing for automatic termination whether within the terms fixed or on expiry of the said term, cannot be taken for granted to sustain the order of termination. On a plain reading of Section 2(oo)(bb), it is quite clear that such term based employment would fall outside the scope of `retrenchment' so long as the requirement of such fixed period of employment was bona fide required by the employer. It was therefore, repeatedly pointed out that such excepted categories required a rigorous test rather than accepting the plea of employer on its face value or otherwise it would cause serious prejudice to an employee, who can be taken for a ride by unscrupulous employers by contending that the term of employment was for specific period though as a matter of fact such period of employment lasted quite for a long spell. In other words even though the requirement of employment

was perennial by adopting the methodology of employing a person for a specific period as many a times, an unscrupulous employer can always resort to abusing the provision contained in Section 2(oo)(bb) to thwart the other statutory protection available to an employee under Section 2(oo), namely, in the case of a `retrenchment' vis-a-vis the consequential benefits contained under Section 25-F of the Industrial Disputes Act. Therefore, when such extraordinary circumstances are brought out in the matter of employment and termination is resorted to by taking umbrage under Section 2(oo)(bb) of the Industrial Disputes Act, in the interest of justice, we are of the view that a close scrutiny of the real position will have to be necessarily made to rule out the possibility of any injustice being caused to an employee. It cannot be lost sight of that Section 2(oo)(bb) is specifically meant to cover only such employment which would be needed for an employer for a specific period alone and beyond which the requirement will not be there and even on such occasions, the employer should not be put into an unnecessary predicament of facing the other consequences that would normally occur while resorting to retrenchment. The benefit of the said exception will have to be strictly restricted to such specific situations alone and the same cannot be allowed to be misused or abused by the employers even in regard to cases where the nature and requirement of employment is perennial."

See :

(1) S.M.Nilajkar v. Telecom District Manager, Karnataka, 2003 Lab IC 2273 : AIR 2003 SC 3553 : 2003 AIR SCW 2196 : 2003 AIR Kant HCR 1193.

(2) Dpty. Director of Health Services, Nashik v. Latabai Rajdhar Paturkar, 1996

Lab IC 428 : (1996)3 Lab LN 675 (Bom)

(3) Madhya Pradesh Bank Karmachari Sangh (MP) v. Syndicate Bank 1996 Lab IC 1161 (MP)

(4) Alexander Yesudas Maikel v. Perfect Oil Seals and IRP, 1995(1) Lab LN 1165 : 1995 Lab LR 777 (Bom)

(5) M.Venugopal v. LIC of India, AP AIR 1994 SC 1343 : 1994 AIR SCW 778 : 1994(1) Lab LJ 597

(6) Chairman-cum-Managing Director, Orissa Road Transport Co. Ltd. v. Ramesh Chandra Gouda, 1994 Lab IC (NOC) 387 : 1994(2) Lab LJ 1127 (Orissa)

(7) Chakradhar Tripathy v. State of Orissa 1992 Lab IC 1813 (Orissa)

(8) Shailendra Nath Shukla v. Vice-Chancellar, Allahabad University, 1987 Lab IC 1607.

9. Termination of service of casual workmen on daily wages will not fall within the exception contained in sub-clause (bb) of S.2(oo) of the Act, because the "contract of employment" is referable to the contract other than engagement of casual workers on daily wages. `Non-renewal of the contract of employment' presupposes an existing contract of employment which is not renewed. Even in respect of a daily-wager a contract of employment may exist, such contract being from day to day. The position however, would be different when such a contract is in reality camouflage for a more sustaining nature of arrangement, but the mode of daily-wager is adopted so as to avoid the rigors of the Act. This clause does not contemplate to cover a contract such as of a daily-wager and is rather intended to cover more general class of contracts where a regular contract of employment is entered into and the

termination of the service is because of non-renewal of the contract. This interpretation of sub-clause (bb) is in consonance with the substantive provision of clause (oo) of S.2 defining `retrenchment' as termination of service of a workman for any reason whatsoever (See: Chairman-cum-Managing Director Orissa Road Transport Co. Ltd. v. Ramesh Chandra Gouda, [1994] II LLJ 1127 (1128-29) (Ori.) (D.B.), per Rath, J.). Likewise termination of service of a `badli' workman in terms of the contract of employment will not be retrenchment in view of this provision. (Shankariah v. K.S.R.T.C., [1986] I LLJ 195 (196) (Kant.), per Rama Jois, J.)

10. In S. Gobindaraju v. K.S.R.T.C. ([1986] II LLJ 351 (SC), per K.N.Singh, J. the case was decided on another short point viz., the workman was entitled to succeed as the termination order was violative of the principles of natural justice, the Supreme Court did not consider it necessary to decide the point that if the termination of service of a workman by non-renewal of the term of contract of employment or under a stipulation contained in the contract of employment in that behalf will not amount to `retrenchment' in view of the provisions of sub-clause 2(bb), it would enable unscrupulous employers always to provide a fixed term or stipulation in the contract of service for terminating the employment of employees to escape the rigor of S.25F or S.25N of the Act. And it would further confer arbitrary powers on the employer which would be destructive of the protection guaranteed by the Act to the employees. But various High Courts, using interpretative techniques have mellowed down the rigor of the bare reading of the statute. In Shailendra Nath Shukla v. Vice Chancellor, Allahabad University ([1987] Lab.I.C. 1607 (All.)

(D.B.), per Sahai, J.; Chairman-cum-Managing Director Orissa Road Transport Co. Ltd. v. Ramesh Chandra Gouda, [1994] II LLJ 1127 (1128-29) (Ori.) (D.B.), per Rath, J.; Jaybharat Printers & Publishers Pvt. Ltd. v. Labour Court Kozhikode, [1994] II LLJ 373 (Ker.), per Shamsuddin, J.; Bhikku Ram v. Presiding Officer Industrial Tribunal-cum-Labour Court, Rohtak, [1995] Lab.I.C. 2448 (2458-60) (Punj. & Har.) (D.B.), per Singhvi, J. In the facts and circumstances of the case, the termination was held not to be bona fide.; Nathu Ram Saini v. Hindustan Copper Ltd., [1995] I LLJ 421 (424) (Raj.), per Singhvi J.; Ramkishan v. Samrat Ashok Technical Institute, Vidisha, [1995] I LLJ 944 (999) (M.P.), per Dwivedi, J.; Alexander Yesudas Maikel v. Perfect Oil Seals and I.R.P., [1996] I LLJ 533 (535-36) (Bom.), per Srikrishna, J.; Vadodara Municipal Corporation v. Gajendra R.Dhumal, [1996] I LLJ 206 (208-9) (Guj.), per Balia, J.), a Division Bench of the Allahabad High Court observed that sub-clause (bb) is in the nature of an exception to S.2(oo) and has to be construed strictly and in favour of the workmen, as the entire object of the Act is to secure a just and fair deal to them, while adjudicating the termination of service of a workman for non-renewal of the contract of employment on expiry of the time stipulated in the contract of employment. The nature of employment must be judged by the nature of duties performed by the workman and not on the basis of the letter issued by the employer. S.2(oo)(bb) cannot be extended to cases where the job continues and the employee's work is also satisfactory but periodical renewals are made to avoid regular status to the workmen, as it would be `unfair labour practice'. If contractual employment is resorted to as a mechanism to frustrate the claim of the

employee to become regular or permanent against a job which continues or the nature of duties is such that the colour of contractual agreement is given to take it out from S.2(oo), then such agreement cannot be regarded as fair or bona fide. In this case, since the workmen had been working for nearly five years continuously and their jobs were not seasonal, casual or of a daily worker and their duties were like that of a regular employee, the termination of their services on expiry of the stipulated period in the agreement or non-renewal of contract of employment did not come under sub-clause 2(oo)(bb) and amounted to `retrenchment'. A similar view has been taken by a single Judge of a Bombay High Court in Dilip Hanumantrao Shirke v. Zilla Parishad, Yavatmal ([1990] Lab.I.C. 100 (103) (Bom.), per Patel, J., holding that the mere fact that the contract of employment provided termination of by efflux of time, would not by itself be sufficient to take such terminations out of the scope of the definition of `retrenchment'. The adjudicator has to address himself to the question as to whether the period of employment was stipulated in the contract of employment as a device to escape the applicability of the definition of `retrenchment'. Likewise, a single Judge of the Punjab & Haryana High Court in Balbir Singh v. Kurukshetra Central Co-op. Bank Ltd. ([1990] LLJ 443 (445) (Punj. & Har.), per Amarjeet Chaudhary, J. See also: Chairman-cum-managing Director Orissa Road Transport Co. Ltd. v. Ramesh Chandra Gauda, [1994] II LLJ 1127 (1128-29) (Ori.) (D.B.), per Rath, J.) has pointed out that this clause being in the nature of an exception cannot be given meaning which will nullify or curtail the ambit of the principle clause, because it is not intended to be an outlet to unscrupulous employers to shunt out

workmen in the garb of non-renewal of the contract even if the work subsists. The clause, therefore, has to be construed strictly in favour of the workman as far as possible. This provision cannot be resorted to, to frustrate the claim of the employee against uncalled for retrenchment or for denying other benefits. In other words, it is not to be so interpreted as to enable an employer to resort to the policy of `hire and fire' and give unguided power to him to renew or not to renew the contract irrespective of the circumstances in which it was entered into or the nature and extent of work for which he was employed. It has to be interpreted to limit it to the case where the work itself has been accomplished and the agreement of hiring for a specific period was genuine. If the work continues, the non-renewal of the contract has to be dubbed as mala fide.

11. In Madhya Pradesh Bank Karamchari Sangh v. Syndicate Bank [(1996) Lab. I.C. 1161 (1165-66) (M.P.), Per Doabia, J.] on a review of the law laid down by the Supreme Court and by various High Courts, a single Judge of the Madhya Pradesh High Court has stated the following principles of interpretation and application of the provisions of this clause --

“(i) that the provisions of Section 2(oo)(bb) are to be construed benevolently in favour of the workmen;

(ii) that if the workman is allowed to continue in service by making periodic appointments from time to time, then it can be said that the case would not fall under section 2(oo)(bb);

(iii) that the provisions of S.2(oo)(bb) are not to be interpreted in the manner which may stifle the main provision;

(iv) that if the workman continues in service, the non-renewal of the contract

can be deemed as mala fide and it may amount to be a fraud on statute;

(v) that there would be wrong presumption of non applicability of section 2(oo)(bb) where the work is of continuous nature and there is nothing on record that the work for which a workman has been appointed had come to an end".

In Alexander *Yesudas Maikel v. Perfect Oil Seals and IRP & Ors.* [1996(1) LLJ 533], the Bombay High Court held in paragraph-5 that:

".....In any event, one cannot lose sight of the fact that clause (bb) has itself been restrictively interpreted and the judicial consensus appears to be that, if the post cannot be said to operate as a charter for unscrupulous employers to jettison their workmen. (See in this connection Dilip Hanumantrao Shirke & Ors. v. Zilla Parishad, Yavatmal & Ors. (1990-I-LLJ-445) (Bom), State Bank of India v. N.Sundaramoney (1976-I-LLJ-478) (SC), S.S.Sambre v. Chief Reg. Manager Central Bank of India, Nagpur & Anr. (1992-I-LLJ-684 Bom), and K.Rajendran v. Dir.(Per.) Project & Equipment Corporation of India Ltd. New Delhi & Anr. 1992 I CLR 462."

Recently, the Apex Court has also considered the scope of 2(oo)(bb) in Haryana State Electronics Development Corporation Ltd Vs. Mamni reported in 2006 AIR SCW 2979 para 8, 9, 10 and 11 are quoted as under:

"8. Section 2 (oo)(bb) of the Industrial Disputes Act reads as under:

"termination of the service of the workman as result of the non-removal of

the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein."

9. The respondent was appointed from time to time. Her services used to be terminated on the expiry of 89 days on regular basis. However, it is noticed that she used to be appointed after a gap of one or two days upon completion of each terms. Such an action on the part of the Appellant can not be said to be bona fide. The High Court rejected the contention raised on behalf of the appellant herein stating:

" It is not possible for us to accept the aforesaid plea raised at the hands of the management on account of the fact that the factual position, which has not been disputed, reveals that the respondent workman was repeatedly engaged on 89 days basis. It is, therefore, clear that the intention of the management was not to engage the respondent workman for a specified period, as alleged, but was to defeat the rights available to him under Section 25-F of the Act. The aforesaid practice at the hands of the petitioner

management to employ the workman repeatedly after a notional breaks, clearly falls within the ambit and scope of unfair labour practice..”

10. A finding of fact was arrived at that her services were terminated on regular basis but she was re appointed after a gap of one or two days. In that view of the matter, the Labour Court or the High Court can not be said to have committed any illegality.

11. In this case the services of the respondent had been terminated on a regular basis and she had been re-appointed after a gap of one or two days. Such a course of action was adopted by the Appellant with a view to defeat the object of the Act. Section 2(oo)(bb) of the Industrial Disputes Act, 1947, therefore, is not attracted in the instant case.”

In view of observation made by Gujarat High Court and Apex Court as referred above, periodical appointments where given to present respondent as Driver without any justification which adopting unfair labour practice, not covered by exception 2(oo)(bb) and it covered by 2(oo) retrenchment. Therefore, not to follow 25(F) at the time of terminating service order of termination renders ab

intio viod. That aspect labour Court has properly considered. For that no errors committed by Labour Court.

In view of the aforesaid discussion and finding given by the Labour Court, according to my opinion, the Labour Court has rightly dealt with the issue raised before the Labour Court by the respective parties. The Labour Court has rightly appreciated the oral and documentary evidence and finding of the fact, which is not baseless and perverse which require any interference by this Court while exercising the power under Art. 227 of the Constitution of India.

The Labour Court has rightly applied the mind and giving clear and cogent reasons in support of his conclusion. Therefore, according to my opinion, the Labour Court has not committed any error, which require any interference by this Court under Art. 227 of the Constitution of India.

Learned advocate Ms. RV Acharya submitted that petitioner will implement the award as early as possible.

Accordingly, there is no substance in the present petition, present petition is dismissed. No order as to costs.

(H.K.RATHOD, J)

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